

THE HONORABLE RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

LAKE UNION DRYDOCK COMPANY, INC.,

Plaintiff,

v.

JJM CONSTRUCTION LTD., in personam, and
BARGE 308, in rem,

Defendants.

At Law or In Admiralty

No. C09-0141-RSM

**ORDER GRANTING SUMMARY
JUDGMENT**

This matter came before the Court on Plaintiff Lake Union Drydock Company's motion under Fed. R. Civ. P. 56 for summary judgment on its breach of contract claim against Defendant JJM Construction Ltd. The Court considered plaintiff's motion, the declarations of George Neilson, Jim Francis, and Hobie Stebbins III, and the exhibits attached thereto, defendant's lack of opposition, and plaintiff's reply. Based on the evidence presented, the Court **HEREBY FINDS:**

1 1. The evidence presented establishes the absence of a genuine issue of material
2 fact as to each element of plaintiff's breach of contract claim;

3 2. Defendant entered into a binding contract with plaintiff on January 30, 2008
4 for the repair of defendant's barges ME-308 and ME-311: the elements of a binding contract
5 are established by LUDD's offer of the contract, JJM's acceptance of the contract and its
6 terms by signature, and valid consideration in the form of LUDD's promise to perform repair
7 work and JJM's promise to pay;

8 3. Plaintiff completed the work contracted for and invoiced defendant
9 accordingly;

10 4. Defendant approved the work and the amounts invoiced. Yet, defendant
11 inexcusably failed to pay plaintiff for any work performed under the contract for work
12 performed on the ME-308 and ME-311;

13 5. Defendant has failed to establish any defense to its obligations under the
14 contract;

15 6. Accordingly, under the contract, plaintiff is as a matter of law entitled to
16 payment of amounts invoiced in the total amount of \$763,284.61 plus interest at two percent
17 per month, or \$206,190;

18 7. As the prevailing party, plaintiff is also entitled to reasonable attorney fees
19 and costs under the contract. Accordingly, plaintiff shall file its cost bill within ten days of
20 his order for determination by this Court of its reasonable fees and costs.

21 8. Plaintiff also incurred consequential damages in the amount of moorage
22 charges incurred to moor the ME-308 alongside its pier in the amount of \$26,196 due to
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1 defendant's contract breach and failure to remove the ME-308 upon completion of the
2 contract work and delivery;

3 9. No genuine issue of material fact precludes summary judgment, as defendant
4 plaintiff cannot raise a genuine issue of material fact as to any element of plaintiff's claim;
5 and

6 10. Plaintiff is entitled to judgment as a matter of law.

7 Based on the above findings, IT IS HEREBY ORDERED that Plaintiff's Motion for
8 Summary Judgment is GRANTED.

9 Plaintiff is HEREBY awarded damages as follows:

10 1. Judgment Creditor: Plaintiff Lake Union Drydock Company

11 2. Judgment Debtor: Defendant JJM Construction Ltd.

12 3. Amount of Judgment:

13 i. Amounts invoiced: \$763,284.61

14 ii. Moorage: \$26,196

15 Total: \$789,480.61

16 4. Amount of Interest Owed to Date of Judgment: Two percent per month on the
17 following amounts from the following due dates:

18 i. On \$251,889.61 from April 10, 2008: \$73,047.98

19 ii. On \$491,910 from April 1, 2008: \$142,653.90

20 iii. On \$19,485 from May 18, 2008: \$5,066.10

21 5. Reasonable Attorney Fees and Costs: Unknown and will be
22 summarized when cost bill is
23 filed by plaintiff.

1 6. Post-judgment Interest pursuant to 28 U.S.C. § 1961: 0.5 percent per annum until
2 satisfied in full.

3 DATED this 25th day of June, 2009.
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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
10

11 Presented By:

12 /s/ Eric R. McVittie

13 ERIC R. McVITTIE, WSBA #20538

14 MARKUS B.G. OBERG, WSBA #34914

15 Attorneys for Plaintiff

16 LeGros, Buchanan & Paul

17 701 Fifth Avenue, Suite 2500

18 Seattle, Washington 98104

19 Telephone: (206) 623-4990

20 Facsimile: (206) 467-4828

21 Email: emcvittie@legros.com
22
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